

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sebastian Saavedra	Team: Squad #1	CCRB Case #: 201903279	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 03/24/2019 9:10 PM	Location of Incident: [REDACTED]	Precinct: 33	18 Mo. SOL 9/24/2020	EO SOL 5/11/2021	
Date/Time CV Reported Tue, 04/16/2019 2:44 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/16/2019 2:44 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			033 PCT
2. POM Rolando Mella	16037	964165	033 PCT
3. POM Donald Gabel	1411	959643	033 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alex Tegan	09383	963819	033 PCT
2. SGT Philip Bowles	03487	934524	033 PCT
3. POM Michael Vaccaro	31892	955612	033 PCT
4. POM Daniel Sanches	12164	961235	033 PCT
5. SGT Gilbert Vega	04451	923306	033 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rolando Mella	Off. Language: At § 87(2)(b) Police Officer Rolando Mella made remarks to § 87(2)(b) based upon race.	[REDACTED]
B.POM Rolando Mella	Off. Language: At § 87(2)(b) Police Officer Rolando Mella made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	[REDACTED]
C.POM Donald Gabel	Force: At § 87(2)(b) Police Officer Donald Gabel used physical force against § 87(2)(b)	[REDACTED]
D.POM Rolando Mella	Discourtesy: At § 87(2)(b) Police Officer Rolando Mella acted discourteously toward § 87(2)(b)	[REDACTED]
E. An officer	Abuse: Inside the 33rd Precinct Stationhouse, an officer searched § 87(2)(b)'s recording device.	[REDACTED]
F.POM Rolando Mella	Off. Language: Inside the 33rd Precinct Stationhouse, Police Officer Rolando Mella made remarks to § 87(2)(b) based upon race.	[REDACTED]

Case Summary

On April 16, 2019, § 87(2)(b) filed this complaint over the phone with the CCRB.

On March 24, 2019, at approximately 9:10pm, § 87(2)(b) was inside his apartment building at § 87(2)(b) in Manhattan. Police Officer Rolando Mella and Police Officer Alex Tegan, both assigned to the 33rd Precinct, arrived on scene in response to a roommate dispute. PO Mella called § 87(2)(b) a “puto nigga” (**Allegations A and B: Offensive Language- § 87(2)(g)**). While officers handcuffed § 87(2)(b) PO Donald Gabel aggressively pulled § 87(2)(b) arm back, causing him significant pain (**Allegation C: Force- § 87(2)(g)**). While § 87(2)(b) was face-down on the ground, PO Mella kicked dust in his face (**Allegation D: Discourtesy- § 87(2)(g)**). Officers then brought § 87(2)(b) to the 33rd Precinct Stationhouse. At the station house, an officer scrolled through § 87(2)(b) cell phone (**Allegation E: Abuse of Authority- § 87(2)(g)**). While § 87(2)(b) was in the holding cell, PO Mella called him a “nigger” (**Allegation F: Offensive Language- § 87(2)(g)**).

Body-worn camera (BWC) footage was obtained and captures part of the incident (Board Reviews 15, 16, 17, and 18). No additional footage was obtained for this incident.

Findings and Recommendations

Allegation (A) Offensive Language: At § 87(2)(b), Police Officer Rolando Mella made remarks to § 87(2)(b) based upon race.

Allegation (B) Offensive Language: At § 87(2)(b), Police Officer Rolando Mella made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).

Allegation (C) Force: At § 87(2)(b), Police Officer Donald Gabel used physical force against § 87(2)(b).

Allegation (D) Discourtesy: At § 87(2)(b), Police Officer Rolando Mella acted discourteously toward § 87(2)(b).

§ 87(2)(b) who shares an apartment with several roommates whom he does not know, testified that earlier in the evening he heard his roommates talking about food in the refrigerator and calling the police. Later on, he returned to his apartment and found the door to his room broken and several items missing, including his wallet and several articles of clothing, and he called the police. § 87(2)(b) and a roommate both went downstairs to wait for the police. PO Mella and PO Tegan arrived and entered the building. PO Mella spoke to one of § 87(2)(b) roommates in Spanish, PO Mella grabbed § 87(2)(b) right arm and PO Tegan his left. PO Tegan told § 87(2)(b) twice to get onto the ground. § 87(2)(b) continually asked what happened. PO Mella called § 87(2)(b) a “Puto Nigga” (which § 87(2)(b) understood to mean nigger “bitch”) as he also told § 87(2)(b) to get on the ground. § 87(2)(b) stiffened his body and it took him approximately 15 seconds to go to the ground. § 87(2)(b) fell onto his knees, then face down on his chest. Subsequently three responding officers arrived. While one officer held him down, one of the responding officers (Male, white, dirty blond hair, 5’11”, uniform, blue eyes, short hair) pulled § 87(2)(b) left arm behind his back in such a way that § 87(2)(b) screamed that the officer was breaking his arm. While § 87(2)(b) was on the ground, PO Mella kicked dust in his face. Officers stood § 87(2)(b) up, and placed handcuffs on him. PO Mella and PO Tegan then brought § 87(2)(b) to the 33rd Precinct Stationhouse (Board Review 01).

§ 87(2)(b) (Board Reviews 09-10), one of § 87(2)(b) roommates, called 911 after § 87(2)(b) threw her groceries out the window. She was aware that § 87(2)(b) also called the police. § 87(2)(b) stated that two officers arrived, followed by two additional ones. The officers told § 87(2)(b) that he could not make frivolous complaints and told him that he could be arrested. § 87(2)(b) started crying and tried to push the officers. The officers waited for § 87(2)(b) to calm down and handcuffed him. As § 87(2)(b) exited the building with the officers, he tried to hit his own head on the door.

PO Mella and PO Tegan denied calling § 87(2)(b) a “Puto Nigga” or hearing any officer do so. Neither recalled hearing § 87(2)(b) complain of any injuries during this incident. PO Tegan

confirmed that PO Mella speaks Spanish while PO Tegan stated that he does not (Board Reviews 02, 03, and 04).

PO Mella testified that, several hours prior to the incident, he and PO Tegan responded to a radio run of a tenant at § 87(2)(b) who told them that § 87(2)(b) had damaged several items of her property. PO Mella and PO Tegan told her to call them again if she saw § 87(2)(b). At approximately 9:10pm, PO Mella and PO Tegan responded to a dispute between tenants at § 87(2)(b). Once they arrived on scene, § 87(2)(b) approached the officers, and another tenant nearby identified him as the subject of the earlier call. PO Mella and PO Tegan asked § 87(2)(b) approximately eight times to put his arms behind his back, and § 87(2)(b) refused, said “no, for what?” and began flailing his arms. PO Mella grabbed his right forearm and placed it behind his back. § 87(2)(b) stiffened his body slightly, and PO Tegan placed a handcuff on that arm. PO Mella brought § 87(2)(b) left arm behind his back, at which point § 87(2)(b) raised both his arms and flailed them. § 87(2)(b) began to run away, and PO Mella pursued him. PO Mella’s feet got tangled with § 87(2)(b) and both tripped, and § 87(2)(b) fell on top of PO Mella. PO Vaccaro and PO Gabel responded, and § 87(2)(b) was handcuffed, but PO Mella did not see who did it because § 87(2)(b) was on top of him. Officers then transported § 87(2)(b) to the 33rd Precinct stationhouse, though PO Mella did not recall which officers did so (Board Review 02).

PO Tegan’s testimony was largely consistent with that of PO Mella. While § 87(2)(b) and PO Mella were on the ground, PO Tegan let PO Gabel and PO Vaccaro into the building. PO Tegan returned and pushed § 87(2)(b) off PO Mella and handcuffed § 87(2)(b). He did not observe any officer kick dirt in § 87(2)(b) face while the latter was on the floor (Board Review 03).

PO Vaccaro testified that he and PO Gabel responded to a radio run for backup at § 87(2)(b) in Manhattan. Upon arriving on scene, PO Vaccaro observed PO Mella and PO Tegan engaged in a physical struggle with § 87(2)(b). PO Vaccaro recalled helping the other officers lift § 87(2)(b) off the ground but did otherwise recall any details of their interaction (Board Review 04). PO Gabel resigned from the NYPD and could not be interviewed (Board Review 19).

PO Gabel matches the physical description provided for the officer who forcibly pulled § 87(2)(b) arm behind his back (Board Review 12).

BWC footage, which was obtained after officer testimonies as no unsealing order was obtained from § 87(2)(b) was largely consistent with the testimonies of PO Tegan, PO Mella, PO Vaccaro. BWC footage from PO Tegan shows that he and PO Mella responded to § 87(2)(b), and § 87(2)(b) was present in the vestibule of the building. § 87(2)(b) was present and pointed to § 87(2)(b) to identify him, and PO Tegan then asked § 87(2)(b) to place his hands behind his back eight times, and § 87(2)(b) refused, continually responding that he had not done anything, and that the other tenants in his apartment had stolen items from his room. PO Tegan then attempted to forcibly grab § 87(2)(b) arm in order to handcuff him, after which PO Tegan’s footage becomes obscured by the ensuing struggle between the officers and § 87(2)(b). PO Tegan can then be heard telling § 87(2)(b) “stop resisting sir, that’s gonna be another charge.” At approximately the 2:24 timestamp of the video player, PO Tegan’s BWC becomes dislodged from his uniform, and falls to the floor pointing towards the ceiling and does not capture footage of the physical struggle. The footage captures audio of PO Tegan telling § 87(2)(b) “give me your arm” three times. At the 3:30 timestamp, part of § 87(2)(b) body is seen on the floor (it is unclear from the footage how § 87(2)(b) body is oriented at this time). The physical struggle appears to last between one and two minutes. At approximately the 3:40 timestamp, PO Tegan picks up and replaces his BWC, and he and PO Mella assist § 87(2)(b) from the floor and stand him up. PO Tegan is breathing heavily. Several additional officers can be seen at this point, though it is unclear from the footage when they arrived on scene. Throughout the footage, no officer can be heard calling § 87(2)(b) a “puto nigga,” nor does the footage show any officer kicking dust in § 87(2)(b) face while he is on the ground.

PO Gabel’s BWC footage begins in the midst of a physical struggle with § 87(2)(b). PO Gabel is on the ground with § 87(2)(b) and other officers. The footage is largely obscured during

the struggle by the officers' and § 87(2)(b) bodies, but an officer is heard repeatedly telling § 87(2)(b) to stop resisting and to give his arm. At approximately the 0:38 second timestamp, PO Gabel can be seen holding § 87(2)(b) left arm in place, while § 87(2)(b) is lying on the floor on his stomach, with both arms behind his back, and PO Mella and PO Tegan attempt to handcuff him. Shortly thereafter, PO Gabel walks away, breathing heavily, from PO Tegan, PO Mella and § 87(2)(b) and stands directly outside the entrance to the building, so that his footage does not capture any additional interaction with § 87(2)(b) until approximately two minutes later, when he is walked out of the building by PO Mella and PO Tegan (Board Reviews 15 and 18).

PO Mella, PO Tegan, and PO Vaccaro all denied swinging their foot near § 87(2)(b) face, kicking dust in his face, or seeing another officer do so.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Inside the 33rd Precinct Stationhouse, an officer searched § 87(2)(b) recording device.

While at the stationhouse § 87(2)(b) observed an officer (Hispanic/white, male, short gray/brown hair, 5'10-5'11, heavyset, brown eyes, in a blue uniform), who was already present at the station house, take his cell phone and skim through his emails and text messages for approximately 5 seconds. The officer was standing to § 87(2)(b) right so § 87(2)(b) could see the colors on the screen of his unlocked phone while the officer scanned it. The officer did not appear to be reading anything in particular did not say anything to § 87(2)(b) about the content of his phone and assisted with the vouchering of § 87(2)(b) property (Board Review 01).

PO Mella testified that he did not interact with § 87(2)(b) at the stationhouse and did not see his cellphone at any point during this incident (Board Review 02).

PO Tegan testified that, after bringing him to the stationhouse, he searched § 87(2)(b) at the desk, and brought him into a cell. PO Tegan denied scrolling through § 87(2)(b) phone at the stationhouse, or seeing any other officer do so (Board Review 03).

PO Vaccaro testified that he did not recall whether he interacted with § 87(2)(b) while at the 33rd Precinct stationhouse, nor any officer taking out § 87(2)(b) cell phone and scrolling through it (Board Review 04).

Sgt. Vega testified that he was assigned to the desk at the 33rd Stationhouse and observed PO Mella bring § 87(2)(b) in under arrest. Sgt. Vega denied looking at § 87(2)(b) phone or interacting with it in any way. Sgt. Vega stated that, generally, arresting officers would remove a prisoner's property, put it in envelopes, and catalogue it. All the property would then be brought before the desk officer, who would confirm that it was consistent with the paperwork, and seal the envelopes, after which the arresting officers would bring said property into the arrest processing room (Board Review 14).

BWC footage from PO Tegan shows that, upon arriving at the stationhouse, PO Mella and PO Tegan bring § 87(2)(b) to the desk and remove all property from his pockets and place it on the desk. Sgt. Vega, who is behind the desk, inspects the items while filling out paperwork. At approximately the 14:40 timestamp, PO Vaccaro, who is standing to § 87(2)(b) right, picks up § 87(2)(b) cell phone, and asks PO Tegan “is this one of ours?” PO Tegan responds that it might be and grabs the phone. In almost simultaneous succession, § 87(2)(b) says that it is his phone, PO Tegan powers on the cell phone, and agrees that it is § 87(2)(b) phone, returns the phone to PO Vaccaro who places it into a Ziploc property bag. From the moment that PO Tegan powered on the phone to when it is in the property bag, only the blue/green screensaver is observed. No officer opens an application or scrolls through any screen (Board Review 15).

§ 87(2)(g)

Allegation (F) Abuse of Authority: Inside the 33rd Precinct Stationhouse, Police Officer Rolando Mella made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) testified that, while in the holding cell at the 33rd Precinct Stationhouse, PO Mella continued to call him a “nigger” (Board Review 01).

BWC from PO Tegan shows PO Tegan and PO Mella bring § 87(2)(b) into the holding cell area immediately after his property is reviewed at the desk by Sgt. Vega. PO Tegan pats § 87(2)(b) down, and asks him to remove his shoes, shoelaces, belt, and socks. PO Mella enters the holding cell area at 19:05 after § 87(2)(b) turns his socks inside out. § 87(2)(b) then enters a holding cell, PO Tegan locks the gate to it, and the footage concludes. No officer can be heard calling § 87(2)(b) a “nigger” at any point in this footage (Board Review 15). No other BWC footage was recorded inside the holding cell area.

All officers denied hearing any officer call § 87(2)(b) a “nigger” (Board Reviews 02, 03, 04, and 14).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to two CCRB complaints and has been named as a victim in three prior allegations (Board Review 05):
 - § 87(2)(b)
- PO Mella has been a member of service for two years and has been a subject in three CCRB complaints and eight allegations, none of which were substantiated. § 87(2)(g)
- PO Gabel was a member of service for three years and has been a subject in one other CCRB complaint and two allegations, one of which was substantiated.
 - 201807337 involved a substantiated allegation of a threat of arrest. The Board recommended formalized training but PO Gabel resigned before the NYPD made a determination on penalty.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.

- As of April 16, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 13).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 1

Investigator: Sebastian Saavedra
Signature

Investigator
Print Title & Name

10/30/2020
Date

Squad Leader: Mgr. Joy Almeyda
Signature

Print Title & Name

10.30.20
Date

Reviewer: _____
Signature

Print Title & Name

Date